

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and
- Ensure that provisions of the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

Empower families – The bill will reduce delays in achieving permanency for children and includes families to a greater degree in the case planning process.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida laws relating to child welfare issues were enacted long before federal intervention. The responsibility and authority to intervene in situations where a child is or appears to be in need of protection as a result of child abuse or neglect has traditionally been at the state rather than federal level.¹ However, beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, Congress has enacted a number of laws having a significant effect on state child protection and child welfare services.²

The major federal laws impacting Florida's child protection system, listed in order of original enactment, are: CAPTA,³ the Indian Child Welfare Act (ICWA),⁴ the Adoption Assistance and Child Welfare Act,⁵ the Family Preservation and Family Support Services Program (established as part of the Omnibus Reconciliation Act of 1993),⁶ the Multi-Ethnic Placement Act (MEPA),⁷ the Adoption and Safe Families Act (ASFA),⁸ the Foster Care Independence Act,⁹ the Child Abuse Prevention and Enforcement Act,¹⁰ the Intercountry Adoption Act,¹¹ the Promoting Safe and Stable Families Amendments,¹² and the Keeping Children and Families Safe Act.¹³

The ASFA of 1997, which amends the 1980 Child Welfare Act, was signed into law on November 19, 1997. This law provides that the health and safety of children served by child welfare agencies must be the paramount concern of those agencies. It emphasizes moving children in foster care more quickly into permanent homes.¹⁴ Its implementing regulations¹⁵ became effective on March 27, 2000. These

¹ National Clearinghouse on Child Abuse and Neglect Information, <http://nccanch.acf.hhs.gov> (August 1, 2005).

² *Id.*

³ P.L. 93-247, amended P.L. 95-266, 98-257, 100-294, 102-295, 104-235.

⁴ P.L. 95-608.

⁵ P.L. 98-272.

⁶ P.L. 103-66.

⁷ P.L. 103-382, amended P.L. 104-188.

⁸ P.L. 105-89.

⁹ P.L. 106-169.

¹⁰ P.L. 106-177.

¹¹ P.L. 106-279.

¹² P.L. 107-133.

¹³ P.L. 108-36.

¹⁴ *Adoption and Safe Families Act of 1997 (H.R. 867)* National Association of Social Workers (December 1997), found at

regulations incorporate provisions of ASFA and MEPA and amend pre-existing regulations by adding new requirements for state compliance with Titles IV-B and IV-E of the Social Security Act.¹⁶

State and local child protection agencies that accept federal funds pursuant to Titles IV-B and IV-E of the Social Security Act are required to follow ASFA and its regulations. In FY 2004-2005, the last year for which figures are available, Florida received \$29,873,959 in federal funds pursuant to Title IV-B and \$190,309,299 in federal funds pursuant to Title IV-E of the Social Security Act. In that year, these sums amounted to 23.61 percent of the total budget for Florida's child welfare programs, a percentage which remains fairly consistent.¹⁷

As a prerequisite to accepting federal funding through Titles IV-B and IV-E of the Social Security Act, states were required to amend state legislation to bring it into compliance with ASFA. However, the short deadlines for compliance¹⁸ required states to draft legislation quickly, increasing the likelihood that inconsistencies would remain between state law and ASFA requirements. Further, since the required date for drafting statutory changes was earlier than the date of the issuance of the final ASFA regulations (January 25, 2000), the likelihood of inconsistencies between state and federal law was even further increased.

During the 1998 session, the Florida Legislature enacted significant changes to Florida's child protection statute, in part with the goal of bringing state law into compliance with ASFA.¹⁹ The ASFA-related changes included:

- Recognizing the parents' right to counsel at the shelter and subsequent hearings and the right, if indigent, to appointed counsel;
- Providing for access by the Department of Children and Family Services ("DCFS" or the "department") to federal and state parent locator services for diligent search activities;
- Increasing requirements for documentation in cases where the case plan goal is not reunification;
- Reducing the time period from 18 to 12 months for judicial review of permanency options for a child;
- Requiring judicial reviews for all children in out-of-home care every six months; and
- Authorizing but not requiring the use of concurrent case planning. Concurrent case planning is the practice of establishing a permanency goal in a case plan which uses reasonable efforts to reunify the child with the parent, while at the same time establishing an alternative or back-up permanency plan to be implemented if children cannot safely return to their biological parents.²⁰ If concurrent case planning is not used, the alternative goal is explored only after the court determines that reunification is no longer a viable permanency option for the child, a process that almost inevitably significantly delays permanence for the child.

The remaining major provisions of ASFA which have not been addressed in state law may be described as:

- "Reasonable efforts" – ASFA redefines "reasonable efforts" to emphasize children's health and safety. It describes at least three circumstances when "reasonable efforts"

<http://www.naswdc.org/archives/advocacy/updates/1997/safeadop.htm>.

¹⁵ 45 CFR ss. 1355, 1356, 1357; see also the introductory materials and comments, found at 65 FR 4020-4075.

¹⁶ *Making Sense of the ASFA Regulations*, Baker, Debra Ratterman et al, American Bar Association (2001), p. 4.

¹⁷ Information obtained from O. Roy Hutcheson, Jr., Chief, Federal Program Eligibility-Revenue Maximization Unit, Child Welfare/CBC Program Office, DCF, August 15, 2005.

¹⁸ P.L. 105-89, s. 103(a)(3).

¹⁹ Ch. 98-403, L.O.F.

²⁰ *Tools for Permanency: Tool #1: Concurrent Permanency Planning*, National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work of the City University of New York, found at www.hunter.cuny.edu/socwork/nrcfcpp (July 2005).

are required by the state agency in child welfare cases: to prevent foster care placement, to finalize a permanency plan for each child, and to reunify families if such placement has occurred. It also describes situations when reasonable efforts to preserve families are not required;

- Case plan and review requirements – ASFA requires that the case plan and associated reviews specifically address child safety and permanency; and
- Increased emphasis on timely permanency decision making, including shorter time periods (shortened from 18 months to 12 months) to finalize a permanency plan, a new requirement for permanency hearings, and a limitation on the time period for reunification services to families.²¹

These three major provisions of ASFA were, for the most part, not addressed in the 1998 legislation. Consequently, Florida law on these issues contains pre-ASFA provisions which are not consistent with current federal law.

Occurring simultaneously with the implementation of the ASFA-related changes, Florida's child welfare system has undertaken the transition from a traditional agency-driven structure to one in which child welfare services are delivered by community-based care lead agencies. These community-based care lead agencies are independent, non-profit organizations under contract with DCF to provide child welfare services. There are currently 22 lead agencies, each with several subcontracting agencies. This decentralization of service delivery has created additional opportunity for confusion as to the requirements of federal and state law in this area.

When state and federal law are not consistent, the Supremacy Clause of the U.S. Constitution requires state courts to apply federal law.²² However, most practitioners and decision makers in the Florida child welfare system are more familiar with Florida law than with federal law. The inconsistencies may not be recognized at the court or agency level and may result in failures to comply with federal law which are detected when state practices are reviewed as part of the federal Child and Family Services Review (CFSR) process. Such a failure may lead to the loss of significant federal financial support for Florida's child welfare program.

Effect of Bill

HB 7123 does the following:

- Creates new definitions of the terms “concurrent planning,” “family team conference,” “permanency goal,” “permanency plan,” “permanent guardian,” and “permanent guardianship of a dependent child.” Current definitions are also amended or deleted to reflect provisions of the bill.
- Removes current provisions relating to time limitations in dependency cases and creates a new section that provides for added emphasis on the fact that time is of the essence for establishing permanency for a child in the dependency system and outlines the time limitations applicable to dependency cases.
- Clarifies that the provisions of chapter 39, F.S., do not supersede the requirements of the federal Indian Child Welfare Act, the Multi-Ethnic Placement Act of 1994, or their implementing regulations and encourages DCF to enter into agreements with recognized American Indian tribes.

²¹ See *Congress Passes Major new Adoption/Foster Care Reform Law*, ABA Center on Children and the Law, found at <http://www.abanet.org/child/adofost.html>.

²² *Hilton v. South Carolina Public Railways Comm'n*, 502 U.S. 197 (1991); *Mississippi Power & Light Co. v. Mississippi*, 487 U.S. 354 (1988); *Kalb v. Feuerstein*, 308 U.S. 433 (1940).

- Provides background screening requirements for the out-of-home placement of children and the process for seeking an exemption from disqualification for placement.
- Clarifies the duty to report to the central abuse hotline the reasonable suspicion that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care and clarifies the authority of the hotline to accept such reports. Adds a child who is known or suspected to be a victim of human trafficking to the list of offenses defined as “criminal conduct.”
- Allows previous reports of child abuse, neglect, or abandonment to be considered in determining whether a child is safe as well as the existing risk to a child at any stage of a child protection proceeding; requires parents or legal custodians to notify the protective investigator of any change in the location or residence of a child while an investigation is open and clarifies that this notification can serve as the basis for a missing child report to law enforcement.
- Authorizes child protection teams within the Department of Health to provide assessment and support in any report alleging sexual abuse of a child.
- Requires that the order at the shelter hearing include a description of the specific services which could prevent or eliminate the need for the removal of a child and the date the services are expected to become available or an explanation of why the services are not available. The bill requires that the order contain a notice to all parties of the date, time, and place of the case plan conference, family team conference, or mediation that will be used to develop the case plan. It also requires the court to inquire, and the parents to provide, the names and location information of all relatives whom they wish to be considered for placement of the child. It requires the court to advise the parents that their parental rights may be terminated if the child is not returned to their custody within 12 months.
- Clarifies that children who are in a permanent guardianship with a relative are eligible for the relative caregiver program.
- Requires that the court consider the continuity of the child’s placement in the same out-of-home residence as a factor in determining the best interests of a child when a petition is filed to change the custody of a child in an out-of-home placement.
- Creates new sections of chapter 39, F.S., describing the procedural and other requirements for developing a case plan, describing the tasks and services that must be addressed in a case plan, and describing the process and grounds for case plan amendments.
- Clarifies that time is of the essence for permanency of children in the dependency system and provides direction to the court in conducting permanency hearings for children.
- Specifies provisions for the permanency options of permanent guardianship of a dependent child, permanent placement with a fit and willing relative, and another planned permanent living arrangement, which conforms the permanency options for dependent children with the options described in federal law.
- Requires that judicial review social studies reports provided periodically to the court include copies of the child’s current health and education records as identified in s. 39.6012, F.S., requires that the child’s permanency goal be reviewed at the judicial review held no later than six months after the child is placed in shelter care, and requires an evaluation at that time of the need for concurrent planning for the child.

- Clarifies the circumstances under which DCF is required to file or be excused from filing a termination of parental rights petition at the time of the 12-month judicial review and provides authority for any party to seek judicial review of DCF's decision not to file this petition based on the enumerated grounds.
- Clarifies that a material breach of the case plan is grounds for filing a termination of parental rights petition before the expiration of the time period for compliance with the case plan if the court finds by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before the time expires to comply with it.
- Provides that, in determining the manifest best interests of a child in the context of a termination of parental rights proceeding, the availability of a non-adoptive relative placement may not be considered as a factor weighing against the termination of parental rights and that, if a child has been in a stable or pre-adoptive placement for not less than six months, the availability of a different placement, including a placement with relative, may not be considered as a ground to deny the petition for termination of parental rights.
- Repeals sections 39.601, 39.622, 39.623, 39.624, and 435.045, Florida Statutes. These sections are related to case planning when parents do not participate and the child is in out-of-home care, long-term custody, long-term licensed custody, independent living, and employment screening requirements for placement of dependent children, respectively.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions.

Section 2. Amends s. 39.0121, F.S., relating to rulemaking authority.

Section 3. Amends s. 39.013, F.S., relating to procedures and right to counsel for parents in dependency proceedings.

Section 4. Creates s. 39.0136, F.S., relating to time limitations and continuances.

Section 5. Creates s. 39.0137, F.S., relating to federal law and rulemaking authority.

Section 6. Creates s. 39.0138, F.S., relating to requirements for placement of children and exemptions from disqualification.

Section 7. Amends s. 39.201, F.S., relating to the central abuse hotline and mandatory reports of abuse, neglect, abandonment, and death.

Section 8. Amends s. 39.301, F.S., relating to child protective investigations.

Section 9. Amends s. 39.303, F.S., relating to child protection teams.

Section 10. Amends s. 39.402, F.S., relating to placement in a shelter.

Section 11. Amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication.

Section 12. Amends s. 39.5085, F.S., relating to the Relative Caregiver Program.

Section 13. Amends s. 39.521, F.S., relating to disposition hearings and powers of disposition.

Section 14. Amends s. 39.522, F.S., relating to postdisposition change of custody.

- Section 15.** Creates s. 39.6011, F.S., relating to case plan development.
- Section 16.** Creates s. 39.6012, F.S., relating to case plan tasks and services to be provided.
- Section 17.** Creates s. 39.6013, F.S., relating to amendments to a case plan.
- Section 18.** Amends s. 39.603, F.S., relating to court approval of case planning.
- Section 19.** Amends s. 39.621, F.S., relating to permanency determinations by the court.
- Section 20.** Creates s. 39.6221, F.S., relating to the permanent guardianship of a child.
- Section 21.** Creates s. 39.6231, F.S., relating to permanent placement of a child with a fit and willing relative.
- Section 22.** Creates s. 39.6241, F.S., relating to another planned permanent living arrangement.
- Section 23.** Amends s. 39.701, F.S., relating to judicial review.
- Section 24.** Amends s. 39.703, F.S., relating to the initiation of termination of parental rights proceedings and judicial review.
- Section 25.** Amends s. 39.806, F.S., relating to grounds for termination of parental rights.
- Section 26.** Amends s. 39.810, F.S., relating to manifest best interest of the child.
- Section 27.** Amends s. 39.811, F.S., relating to powers and orders of disposition.
- Section 28.** Amends s. 39.0015, F.S., relating to child abuse prevention training in the district school system.
- Section 29.** Amends 39.205, F.S., relating to penalties relating to the reporting of abuse, abandonment, or neglect.
- Section 30.** Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.
- Section 31.** Amends s. 39.802, F.S., relating to petitions for termination of parental rights.
- Section 32.** Amends s. 39.828, relating to the appointment of a guardian advocate for drug dependent newborns.
- Section 33.** Amends s. 63.092, F.S., relating to reports to the court of intended placement by an adoption entity, at-risk placements, and preliminary studies.
- Section 34.** Amends s. 409.165, F.S., relating to alternative care for children.
- Section 35.** Amends s. 419.001, F.S., relating to site selection of community residential homes.
- Section 36.** Repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.
- Section 37.** Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under \$1 million in penalties from the federal government for lack of consistency with federal laws and regulations. However, the department does not anticipate any fiscal impact associated with the implementation of this bill.

The bill removes areas of confusion that have led to delay in permanency for children. As a result, more children should achieve permanency at an earlier time, reducing the need for foster care services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and

- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions in this bill regarding criminal history screening of prospective placements appear confusing; lines 1104-1148. For instance, the provisions refer to physical assault which is not an offense, and to sexual assault which is properly defined as sexual battery under s. 794.011, F.S. The provisions also imply, but do not specifically provide, that DCFS may waive prior convictions in certain circumstances.

The bill attempts to bring Florida law into compliance with federal laws and regulations. Nevertheless, not all of the provisions of the Code of Federal Regulations pertaining to Title IV-E foster care programs have been implemented in the bill. Specifically, the bill does not include the provision requiring the state to file a petition to terminate the parental rights of a foster child who has been the responsibility of the state for 15 of the last 22 months, 45 C.F.R. s. 1356.21(i)(1)(i), and the provision requiring the state to file a petition to terminate the parental rights of a parent who has been convicted of an enumerated felony, 45 C.F.R. s. 1356.21(i)(1)(iii).

There appear to be grammar and usage or consistency issues in the following lines: 645-653; 1169; 1526; 1606-1608; 2002-2003; 2136-2138; 2145-2148; and 2086.

It appears that the permanency goals outlined in the bill, on lines 688 and 1891, are in order of preference. If this is the case, that order should be specifically stated.

It is unclear why the portion of the bill, beginning on line 2066, providing that placement of a child in a permanent guardianship does not terminate the parent-child relationship is not applicable to all three forms of permanent placement.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES